

**Peer Bux and anr. Vs. the State and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/761961](http://sooperkanoon.com/761961)

**Court :** Rajasthan

**Decided On :** Oct-14-1982

**Reported in :** 1982WLN(UC)598

**Judge :** Kanta Bhatnagar, J.

**Appeal No. :** S.B. Criminal Revision Petition No. 183/78

**Appellant :** Peer Bux and anr.

**Respondent :** The State and anr.

**Judgement :**

**Kanta Bhatnagar, J.**

1. Upon a complaint filed by the Inspector Factories at Bhilwara, the Chief Judicial Magistrate, Bhilwara tried the petitioners for the offence under Section 92 of the Factories Act, 1948 (hereinafter to, be referred as the 'Act') and by the judgment dated August 2, 1976 held them guilty and sentenced them each to a fine of Rs. 200/- (two hundred only) in default to undergo 20 days SI. Being aggrieved with the judgment of conviction and sentence, the petitioners preferred an appeal in the Court of Sessions Judge, Bhilwara. The appeal was transferred to the Court of the Addl. Sessions Judge. Bhilwara. The learned Additional Sessions Judge, Bhilwara by the judgment dated March 22, 1978 rejected the appeal.

2. It is in dissatisfaction with the aforesaid orders that the petitioners have invoked the revisional jurisdiction of this Court.

3. Briefly stated, the facts of the case giving rise to the trial of the petitioners, the appeal preferred by them and the present revision petition are as under:- The petitioners are said to be carrying on business in the name and style of Messers Munshi Painting Works at Bus Stand, Bhilwara. On January 16, 1974 G.S. Kandoi (PW. 1), the Factory Inspector at Bhilwara, checked the workshop of the petitioners. Petitioner no. 1 Peer Bux was present there at the time and the 13 workers, with the help of electric motor of 8 HP were doing the painting and connected works on the Bus No. RJE 1331. The number of the workers exceeding ten in number, the workshop fell within the definition of a 'Factory' as provided in Section 2(m) of the Factories Act. Such a factory is required to be registered and the certificate to be obtained under the Factories Act. The petitioners failed to comply with the provisions of the Act. Thus it was considered to be non-compliance of Section 6 and 7 of the Act punishable under Section 92 of the Act. The Inspector, therefore, filed a complaint in the Court of the Chief Judicial Magistrate, Bhilwara against the petitioners. Petitioners were summoned. The learned Magistrate tried them for the aforesaid offence. Inspector G.S. Kandoi (PW. 1) appeared in the witness box to substantiate the allegations leveled against the petitioners. Both the petitioners denied the allegations levelled against them in their statements. Petitioner Peer Bux appeared in the witness box and stated on oath that, only seven workers were employee by him and the four were brought by the owner of the bus from the workshop of Kishan Lal to fix the glass panes on the bus and one was the conductor of the bus. Kishanlal was examined as DW 2 to substantiate the contention of the petitioner Peer Bux. The learned Judge did not consider the plea taken by the petitioner Peer Bux believable and held the petitioners guilty for the offence under Section 92 of the Act and sentenced them as stated above. The appeal also failed, hence this revision petition in this Court.

4. The learned Counsel for the petitioners has assailed the findings of the learned courts below on a number of grounds. It has been strenuously contended by the learned Counsel that the defence version being consistent throughout and plausible should have been relied upon by the learned trial Judge. According to

him Kishanlal (DW. 2) has clearly stated that he had sent four workers to work at the bus for fitting the windows etc. and as such there was no reason to disbelieve him.

5. This is correct that Peer Bux has taken a consistent plea that only seven workers were engaged by him and four had come from the shop of Kishan Lal to work at the window panes and one was the man of the owner of the Bus. The two courts below have discussed in detail this plea taken by Peer bux petitioner. But in view of the omission on the part of the Kishan Lal to prove his employing those persons and making the payment and the fact that at the relevant time the painting work was going on, the court did not believe the defence plea. Section 103 of the Act deals with the presumption as to employment. The circumstance in which a person is treated to be an employee of the factory are enumerated in that section. If 13 persons were found working at the workshop at the time of the inspection the Court was justified in presuming that they were workers of that workshop. In such circumstances, the onus to rebut the presumption lay upon the petitioners.

6. Mr. Gupta, learned Counsel for the petitioners referred to the case of AEG, Carapiet v. A.Y Derderian : AIR1961 Cal359 and argued that the opponent has not put its case in cross-examination to the defence witnesses and therefore, their statements should be taken to be correct.

7. The two courts below have discussed in detail the evidence and it is not open to this Court in its revisional jurisdiction to reappraise the evidence to find out whether different opinion can be formed.

8. The next argument advanced by the learned Counsel for the petitioners is that there is no evidence to suggest that the persons working at the workshop fell within the definition of a 'worker' as provided in Section 2(1) of the act and therefore, the provisions of the Act were not applicable.

9. Learned Counsel for the petitioners has referred to the cases of Shanker Balaji Waje v. The State of Maharashtra : (1962)ILLJ119SC and V P. Gopala Rao v. Public Prosecutor Andhra Pradesh : 1970 CriLJ22 to substantiate his arguments that there must be contract and relationship of master and servant between the

owner and the employer and the fact of some persons working at a particular time in the workshop would not make them a 'worker' as defined in the Act. It was nowhere the case of the petitioners that the persons working were for a particular work for a particular time, rather the plea was that they were not at all the workers of their workshop. This plea did not find favour with the two courts below and in my opinion the courts did not commit any error.

10. The learned Counsel for the petitioners, further contended that even if the case of the complainant is taken to be true still there is no evidence to connect Sirajuddin with the workshop so as to hold him an employer. The argument has full force. The learned Judge has nowhere stated that Sirajuddin was in any way concerned with the factory, nor is there any evidence to the effect that he was at all present at the workshop at the relevant time. In the absence of any evidence to connect Sirajuddin with that workshop, merely because he happens to be the brother of Peer Bux, he cannot be held responsible for any contravention of the Act concerning that workshop. The learned Public Prosecutor could not point out any material on record to show that Sirajuddin was either a partner in the business or was present at the time of the inspection or was in any way concerned with its affair.

11. In this view of the matter, the conviction and sentence awarded to Sirajuddin cannot be sustained.

12. The result of the above discussion is that the petition filed by Sirajuddin is allowed and his conviction and sentence are set aside. The amount of fine if deposited by him shall be refunded. The petition of Peer Bux is dismissed.